

In the Matter of)
)
Regulation of Prepaid Calling Card Services) WC Docket No. 05-68

The Voice on the Net Coalition (“VON Coalition”) hereby files these Reply Comments in the above-captioned proceeding in which the Commission is considering the regulatory classification and jurisdiction of certain types of prepaid calling cards, including Internet Protocol (“IP”)-enabled cards.¹ As innovators in the development of IP-enabled services, the VON Coalition urges the Commission to (i) refrain from adopting a piecemeal approach in determining whether to regulate certain IP-enabled services and to instead address issues pertaining to IP-enabled services in a comprehensive manner through action in the pending proceedings regarding IP-enabled services, intercarrier compensation, and universal service; (ii) refrain from trying to define the degree of enhanced functionality necessary to classify a service as an information service rather than a telecommunications service; and (iii) ensure that its actions in this proceeding do not deter new investment in IP-enabled networks.

Introduction

VON Coalition. The VON Coalition consists of companies that are developing and offering voice products and services for use on the Internet and IP networks. Largely through the efforts of VON Coalition members,² packet-switched voice services are emerging as an

¹ See *Regulation of Prepaid Calling Card Services, Notice of Proposed Rulemaking*, WC Docket No. 03-133, FCC 05-41 (February 23, 2005) (“*NPRM*”).

² VON Coalition members are Acceris, Accessline Communications, AT&T, BMX, BT, CallSmart, Convedia, Covad, Earthlink, iBasis, Intel, Intrado, Level 3, MCI, Microsoft.

exciting new technology benefiting consumers throughout the world. Since its inception, the VON Coalition has consistently advocated that federal and state regulators maintain current policies of refraining from extending legacy regulations to Internet services.³

NPRM. In February 2005, the Commission issued a decision declaring that a certain calling card service provided by AT&T was a telecommunications service as defined by the Communications Act.⁴ During the course of the proceeding leading to this decision, AT&T presented evidence regarding two other types of prepaid calling card services which it argued qualified as enhanced rather than telecommunications services. One service allows customers to listen to additional information or perform additional functions before listening to an advertising message. *NPRM* ¶ 38. The other service uses IP transport for a portion of the call (“IP-in-the-middle”). *Id.* In the *NPRM*, the Commission concludes that it would serve the public interest to determine the regulatory regime for these variations of prepaid calling cards in a comprehensive rather than a piecemeal manner. *Id.* The Commission seeks comment on whether the calling card services proposed by AT&T are more appropriately classified as telecommunications or information services. *Id.* ¶¶ 39-40. The Commission also asks commenters to address how to distinguish between telecommunications and information services for other prepaid calling card services that incorporate features not specifically addressed in the *NPRM*. *Id.* ¶ 41. For example, the Commission seeks input as to whether offering a menu of options to access information is sufficient for the service to qualify as an information service or whether instead the information made available must be “more integral” to the underlying telecommunications

Mobilepro, Multi-Link, New Global Telecom, PointOne, pulver.com, Skype, Texas Instruments, T-Mobile, USA Datanet, and VocalData.

³ More information about the VON Coalition can be found at <http://www.von.org>.

⁴ See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order, FCC 05-41 (February 23, 2005) (“*AT&T Declaratory Order*”).

service. *Id.* ¶ 39. To the extent a particular calling card service is classified as a telecommunications service, the Commission seeks comment on whether to assert exclusive federal jurisdiction over the service. *Id.* ¶ 42.

Discussion

I. THE COMMISSION SHOULD ASSESS INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE FOR IP-ENABLED SERVICES IN A COMPREHENSIVE MANNER

The issues raised in the *NPRM* pertaining to IP-enabled calling cards are inextricably intertwined with issues the Commission is already considering in the pending IP-enabled services,⁵ intercarrier compensation,⁶ and universal service proceedings.⁷ The Commission has no rational basis for carving out IP-enabled calling cards for special consideration among the myriad of IP-enabled services. Such a piecemeal approach to addressing the regulatory status of IP-enabled services only leads to further uncertainty for the IP-enabled industry. While the Commission concludes that it is in the public interest to assess the regulatory regime for variations of prepaid calling cards in a comprehensive manner,⁸ the same is true for all IP-enabled services, of which IP-enabled calling cards are just a subset.

⁵ See *IP-Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28 (released March 10, 2004).

⁶ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33 (March 3, 2005).

⁷ See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002).

⁸ *NPRM* ¶ 38 (“Rather than continuing to address the appropriate regulatory regime for variations of prepaid calling cards in a piecemeal manner, we conclude that the public interest would best be served by considering this issue in a more comprehensive manner. . .”).

In the *NPRM*, the Commission seeks comment on what degree of enhanced functionality is sufficient to classify an IP-based calling card service as an information rather than a telecommunications service. In the pending *IP-Enabled Services NPRM*, however, the Commission has already requested specific comment on how to classify different categories of IP-enabled services between telecommunications and information services. *IP-Enabled Services NPRM* ¶ 43. IP-enabled calling card applications and networks fall squarely within those services and facilities contemplated by the Commission in its pending IP-enabled services *NPRM*. There is no reason for the Commission to consider IP-enabled calling cards separately from its consideration of other IP-enabled services. Premature action in this proceeding to classify IP-enabled calling cards could unnecessarily prejudice the outcome of the *IP-Enabled Services* and *Intercarrier Compensation* proceedings. Rather than adopting a piecemeal approach to determining the regulatory and jurisdictional classification of IP-enabled services, the Commission should seek to provide certainty in a comprehensive manner through action in the IP-enabled services proceeding.

In addition to a comprehensive approach to assessing the appropriate regulatory and jurisdictional classification of IP-enabled services, the Commission should also pursue comprehensive reform of intercarrier compensation and universal service. The need for reform of the current regimes cannot be over-emphasized. Indeed, were it not for the anachronistic intercarrier compensation and universal service regimes, the Commission and the industry would not be struggling with the issues presented in the instant *NPRM*. Comprehensive reform of these regimes will end the need for fact-specific evaluations, such as the one the Commission has

embarked on in this proceeding.⁹ The public interest would be far better served if the Commission were to resolve broader intercarrier compensation and universal service issues in a comprehensive manner rather than adopting service-specific rulings in a piecemeal fashion.¹⁰

II. THE COMMISSION'S ACTIONS SHOULD SUPPORT CONTINUED INVESTMENT IN IP-ENABLED NETWORKS

The VON Coalition urges the Commission when acting in this proceeding to be mindful of the significant value added by IP-enabled networks. As the VON Coalition has demonstrated previously, in contrast to plain old telephone service, voice service provided on an IP network is an application just like email, streaming audio, streaming video, and web browsing.¹¹ Because it is provided in IP form, voice applications can be combined with other IP-based applications. In real terms, this means that IP-enabled networks increase the reliability and robustness of IP applications. The benefits of IP-enabled services include cost savings for consumers, reduced operational costs for providers, advanced features unavailable with traditional circuit-switched telephony, increased competition, increased infrastructure investment, accelerated broadband deployment, improvements in emergency services, lower cost communications for rural and government users, increased access for persons with disabilities, and increased worker productivity.

⁹ See Comments of SBC Communications Inc., WC Docket No. 05-68 (April 15, 2005) at n.4 (“[I]f the Commission successfully and comprehensively reforms its intercarrier compensation rules and adopts a unified approach to intercarrier compensation, it could obviate any need for service specific intercarrier compensation rules addressing prepaid calling card services.”).

¹⁰ Interim rules applicable to all IP-enabled services, might provide needed regulatory certainty until the Commission adopts comprehensive rules in the pending IP-enabled services, intercarrier compensation, and universal service proceedings. Rather than carving out subcategories, such as IP-enabled prepaid calling card services, the VON Coalition supports the adoption of interim compensation rules which would apply reciprocal compensation rates for the termination of all IP-enabled services.

¹¹ See, e.g., VON Coalition, Comments, WC Docket No. 04-36 (May 28, 2004).

In the context of IP-enabled calling cards, such services provided over an IP network have the capability of providing consumers enhanced features that are impossible to provide over networks that primarily utilize circuit switches. By deploying IP networks that are capable of running a range of applications, many VON Coalition members have sought to maximize the efficiency of IP-based technology and to facilitate the offering of innovative and sophisticated enhanced features and services. IP calling card platforms are only one type of service enabled by next-generation, IP networks.

The Commission should ensure that its actions in this proceeding do not deter investment in new IP-based networks. The growth of IP-enabled services has been propelled in part by the Commission's "hands-off" regulatory approach. A rush to judgment in this proceeding would be inappropriate.

Conclusion

For the reasons stated above, the VON Coalition requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,

THE VON COALITION

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